

May 2, 2019

VIA ECF

Honorable David T. Schultz
United States District Court
9E U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Re: Fair Isaac Corp. v. Federal Insurance Co., et al.
No. 16-cv-01054-WMW-DTS (D. Minn. Filed April 21, 2016)

Dear Judge Schultz:

Defendants Federal Insurance Company and ACE American Insurance Company (collectively, “Defendants”) respectfully request that the Court authorize Defendants to share FICO’s Expert Report of Neil Zoltowski (hereinafter, “Expert Report”) with Kevin Harkin, who was one of Defendants’ Rule 30(b)(6) designated witnesses, notwithstanding the “Confidential – Attorneys’ Eyes Only” designation. In this Expert Report, FICO raises concepts and issues that were not directly raised during discovery, including a so-called single-economic-unit theory and pooling agreements. Defendants’ experts need to discuss these newly raised concepts and issues with Mr. Harkin as they prepare their response expert reports. Mr. Harkin is the Senior Vice President, North America FP&A/Financial Operations, and therefore, he has knowledge regarding the corporate structure and relationships between the various entities.

FICO previously made a similar request of Defendants. In March 2019, Ms. Kleibenstein sought, “permission as a professional courtesy,” for Defendants to de-designate a document which had been designated as “Confidential – Attorneys’ Eyes Only,” so that William Waid could review the document and assist FICO’s expert witnesses in preparing their expert reports. *See Exhibit A.* Defendants agreed to allow Mr. Waid (or one internal business person at FICO) to view the document, with the caveat that all other “Confidential – Attorneys’ Eyes Only” restrictions should continue to apply. *See id.* The report of FICO’s expert witness, Neil Zoltowski, served on April 19, 2019, references multiple discussions with Mr. Waid.

On April, 30, 2019, Defendants’ counsel emailed FICO’s counsel and respectfully requested permission to discuss FICO’s expert reports, all marked as “Confidential – Attorneys’ Eyes Only,” with Kevin Harkin. FICO refused to grant Defendants’ request for the reasons set forth in

VIA ECF
Page 2

FICO's Motion to Strike filed on April 5, 2019. *See* Exhibit B.

Defendants are seeking the same professional courtesy, and therefore, respectfully request that the Court allow Mr. Harkin to review FICO's Expert Report so that he can discuss the newly-raised concepts with Defendants' experts as they prepare their response expert reports, which are due on May 17, 2019.

Best regards,



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